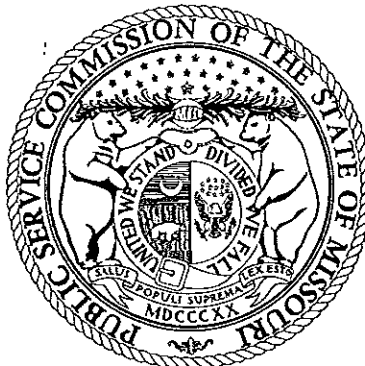


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**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**



In the Matter of the Petition of DIECA Communica- )  
tions Inc., d/b/a Covad Communications Company, )  
for Arbitration of Interconnection Rates, Terms, ) Case No. TO-2000-322  
Conditions and Related Arrangements With South- )  
western Bell Telephone Company. )

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**ARBITRATION ORDER**

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**Issue Date:** March 23, 2000

**Effective Date:** March 23, 2000

**BEFORE THE PUBLIC SERVICE COMMISSION**  
**OF THE STATE OF MISSOURI**

In the Matter of the Petition of DIECA Communica- )  
tions Inc., d/b/a Covad Communications Company, )  
for Arbitration of Interconnection Rates, Terms, ) Case No. TO-2000-322  
Conditions and Related Arrangements With South- )  
western Bell Telephone Company. )

**APPEARANCES**

Laura A. Izon, Counsel, Covad Communications Company, 2330 Central Expressway, Santa Clara, California 95050,

and

Christopher Goodpastor, Attorney at Law, Covad Communications Company, 960 Great Hills Trail, Suite 150N, Austin, Texas 78759,

and

Mark P. Johnson, Sonnenschein, Nath & Rosenthal, 4520 Main Street, Suite 1100, Kansas City, Missouri 64111, for DIECA Communications, Inc., d/b/a Covad Communications Company.

Paul G. Lane, General Counsel-Missouri, and Mimi B. MacDonald, Attorney, Southwestern Bell Telephone Company, One Bell Center, Suite 3520, St. Louis, Missouri 63101, for Southwestern Bell Telephone Company.

John B. Coffman, Deputy Public Counsel, and Michael F. Dandino, Senior Public Counsel, Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

William K. Haas, Deputy General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

**REGULATORY LAW JUDGE: Keith Thornburg.**

# ARBITRATION ORDER

## Procedural History

On November 9, 1999, DIECA Communications, Inc., d/b/a Covad Communications Company (Covad), filed a petition seeking arbitration of unresolved interconnection issues related to Covad's request for an interconnection agreement with Southwestern Bell Telephone Company (SWBT). SWBT filed its answer to Covad's petition on December 6, 1999. The agreement under consideration will have a term of approximately one year.

Covad's Petition is based on the requirements of Section 252(b) of the Telecommunications Act of 1996, which requires state commissions, such as the Missouri Public Service Commission, to arbitrate interconnection disputes between an incumbent local exchange carrier (ILEC) and a telecommunications carrier as defined in the Telecommunications Act. SWBT is an ILEC as defined in the Telecommunications Act. Covad is a competitive local exchange carrier (CLEC). Covad meets the Act's definition of telecommunications carrier.,

Covad uses various technologies to provide Digital Subscriber Line Equipment and Services to its customers. The term "xDSL" is a generic term describing the technologies and services. xDSL technologies are used to provide high speed digital data transmission through telephone lines. Covad seeks an interconnection agreement with SWBT so that it may make use of portions of SWBT's network to offer its services.

The Commission issued its Order Regarding Arbitration on November 29, 1999. Among other things, the order directed the Staff of the

Missouri Public Service Commission (Staff) to participate in the proceeding and directed the parties to prepare a proposed procedural schedule. On December 22, 1999, a prehearing conference was held. On December 27, 1999, the Commission issued its Order Adopting Procedural Schedule. The procedural schedule was later amended in the course of these proceedings in certain respects.

Pursuant to the requirements of the procedural schedule, as amended, a Joint Issues Statement was filed on January 5, 2000, framing the issues presented for arbitration. Prefiled written testimony of the parties was filed in this case between January 7, 2000, and February 10, 2000. A hearing was conducted on February 15 and 16, 2000. The parties filed posthearing briefs and proposed findings of fact and conclusions of law on March 1, 2000.<sup>1</sup>

### **Findings of Fact**

The Missouri Public Service Commission has considered all of the competent and substantial evidence upon the whole record in order to make the following findings of fact. The Commission has also considered the positions and arguments of all the parties in making these findings. Failure to specifically address a particular item offered into evidence or a position or argument made by a party does not indicate that the

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<sup>1</sup> The Office of the Public Counsel presented a statement at the opening of the hearing in this proceeding and also supported an application for intervention filed by the Missouri Department of Economic Development on February 14, 2000. The Public Counsel did not offer other input. The Missouri Department of Economic Development's application for intervention was denied.

Commission has not considered it. Rather, the omitted material was not dispositive of the issues before the Commission.

### Loop Qualification and Pricing

xDSL technology allows a customer to use existing telephone lines to transmit and receive data at high speed. DSL stands for "Digital Subscriber Line" and the x is a generic reference to this technology. The x is replaced with a specific letter to designate a specific DSL technology.

The telephone line serving a customer is also referred to as a "loop". A loop is a pair of wires that run from the telephone company's central office to the customer's premises. xDSL services are offered over one or two pairs of twisted copper loops.

In some cases certain devices may be present on a loop that interfere (interferors) with the xDSL digital signal. These devices are load coils, digital repeaters, and excessive bridged taps. If the customer's telephone line does contain such interferors, they must be disconnected from the loop in most instances before adequate xDSL service can be provided. Removal of interferors from a loop is referred to as "conditioning". An alternative to conditioning a loop would be to locate an available loop that does not require conditioning. SWBT has agreed to provide xDSL-capable loops to Covad as an unbundled network element.

Before Covad can utilize a particular loop to provide xDSL service to a customer, it must learn whether or not any interferors are present on that loop and the length of the loop. This process is referred to as loop qualification.

SWBT is offering Covad a two-step process for determining what, if any, interferors are present on a loop. The first step is prequalification. This would allow Covad to access an electronic database where all loops have been divided into Distribution Areas. This database does not contain information about the exact makeup of individual loops. Instead it broadly categorizes loops by length and composition.

If Covad wishes to proceed further than prequalification, SWBT proposes that Covad request SWBT to locate and qualify a loop. SWBT's testimony indicated that its loop qualification process is a partially mechanized process. In some cases complete loop makeup data may exist in one or more electronic (or mechanized) databases, and in some cases a SWBT employee must physically pull a paper map from files and examine the representation of the loop to determine whether or not any interferors are on the loop.

SWBT will attempt to locate an available loop that does not require conditioning. SWBT asserted that some of the manual labor involved in its partially mechanized loop qualification process would have to be performed by an engineer.

SWBT proposes to charge Covad \$15.00 per loop for loop qualification. SWBT presented this as an average charge reflecting that in some cases all the required loop makeup data would be mechanized and in other cases manual labor would be required.

SWBT initially indicated that it would provide mechanized loop qualification with direct electronic access for CLECs on a "designed" basis by July 1, 2000, and on an "as built basis" by December 31, 2000. However,

in later testimony, SWBT indicated that it was striving to have electronic access to loop qualification information by July 1, 2000, and that this date should be achievable.

SWBT asserted that its mechanized database would never be 100 percent populated with the data that it requires to perform a loop qualification. Therefore, SWBT did not offer any reduction in its proposed charge for loop qualification since that charge is based on an average, which assumes use of both mechanized and manual processes to qualify loops.

Covad and SWBT disagreed on the information necessary to determine loop qualification. Covad indicated that it was requesting only loop makeup information and that this information existed in SWBT's current databases. Covad stated that it was not requesting that SWBT undertake an effort to populate the database. Covad stated that the information it requires exists in SWBT's back office systems and is used for loop assignment purposes. Covad described various SWBT databases from which Covad could access the data it required to qualify a loop. Covad stated that it would analyze the loop makeup information using its own engineers.

Covad stated that it only required information to show actual loop length, presence of excessive bridged taps, and presence of load coils and repeaters. Covad stated it did not need additional information to qualify a loop, such as the location of load coils, bridged taps and repeaters. Covad conceded that information regarding location of these items might be difficult to provide, but Covad was not requesting this information for loop qualification purposes.

SWBT indicated that a drafting clerk could determine loop makeup, but would not be able to analyze the data or study loop binder groups to locate a loop pair that would not require conditioning. SWBT described specific information that would not be available in a mechanized database, such as locations of load coils, repeaters, and bridged taps. SWBT asserted that determining the location of interferors on the loop was part of the qualification process.

SWBT stated that it would not provide direct access to its databases but would provide electronic access to the relevant information in its databases. SWBT also stated it would not undertake to populate its databases with all information it would deem necessary to perform a loop qualification. Covad responded that it is not requesting SWBT to populate its database and that the data it requires already exists in SWBT's database. Staff and Covad state that electronic access should be provided at no additional charge through SWBT's Operational Support System (OSS).

Covad asserted that SWBT's prices, based on manual and partial mechanical processes, do not meet the Total Element Long Run Incremental Cost (TELRIC) standard imposed by federal regulation (47 C.F.R. 51.505(b)(1)). TELRIC principles require that prices of unbundled network elements be based on forward-looking economic cost, which must be measured based on the use of the most efficient telecommunications technology currently available. Under this standard, Covad argued that the most efficient loop qualification process should be performed on a 100 percent mechanized basis and the price should be zero since the cost for a mechanized process is recovered elsewhere.

Covad asserted, in the alternative, that even if SWBT were to receive additional compensation for loop qualification, SWBT should not use an engineer's time to determine loop makeup data and that SWBT's proposed price was therefore too high. Covad offered a substantially reduced alternative price proposal.

Staff proposed adjusting SWBT's proposed loop qualification pricing by removing a joint and common cost factor to reduce the price to \$13.00. Staff further noted arbitration orders in Texas requiring SWBT to provide access to mechanized loop qualification by July 1, 2000, and SWBT's efforts to provide further mechanization of the loop qualification process. Based on these circumstances, Staff offered its price as an interim charge to be discontinued after July 1, 2000.

Staff's basis for removing joint and common costs from nonrecurring charges, such as loop qualification, was that these costs are fully recovered in recurring charges. SWBT asserted that the expenses associated with nonrecurring charges were in fact in its underlying expense base on which the joint and common cost factor was determined. If this factor were not applied to nonrecurring charges, then there would be an underrecovery of joint and common costs unless the factor was increased. Staff was not able to verify that SWBT's accounting system in fact excluded expenses related to provisioning goods or services to which nonrecurring charges applied.

Covad stated that it should not have to subscribe to or pay for information that it does not require. Covad has stated that it only needs loop makeup information and that it can qualify the loop itself. Covad

disagrees with SWBT concerning the amount of information that is required to qualify a loop. Covad has stated that it does not require SWBT's clerical or engineering labor to qualify a loop.

The Commission determines that Covad shall have electronic access only to the relevant loop qualification data that exists in SWBT's mechanized database by August 1, 2000. While the record indicates that the mechanized database may be available on July 1, 2000, the Commission has chosen a later cut-over date in order to allow a period for testing and training. As of the cut-over date Covad shall have electronic access only to the relevant data through SWBT's OSS at no additional charge. Covad will pay SWBT's proposed \$15.00 charge for loop qualification until August 1, 2000.

### Loop Conditioning

The issues in this case concerning conditioning are whether SWBT should be permitted to charge for loop conditioning, and, if so, what is the appropriate price. SWBT does not charge for removing load coils or repeaters from loops under 12,000 feet because their presence on such loops is infrequent. For loops over 17,500 feet SWBT and Covad have agreed to terms. Thus, the focus in this arbitration involves loops of between 12,000 and 17,500 feet. Even in this range, conditioning will infrequently be required. SWBT stated that information it gathered showed load coils would be removed 2 percent of the time; bridged taps 6 percent of the time; and repeaters 0.6 percent of the time.

The Federal Communications Commission's (FCC's) interpretation of federal law requires SWBT to perform the conditioning work requested by

Covad. However, it also requires that Covad compensate SWBT for the cost of such conditioning. The fact that Covad must compensate SWBT for the cost of conditioning the loops it requests is not disputed. However, the parties disagree sharply concerning how SWBT is to be compensated for its work.

SWBT's position is that it should be compensated based on nonrecurring charges established in prior cases before this Commission for the conditioning services it provides. Covad's initial position is that since SWBT's recurring charges are based on a network that does not require conditioning, that SWBT is already recovering its costs in the form of those recurring charges.

While the Commission may, under FCC decisions, permit the recovery of nonrecurring costs in the form of recurring charges, the Commission has previously established nonrecurring charges for loop conditioning costs. The Commission has not, in prior arbitration proceedings, affirmatively placed the cost of conditioning SWBT's existing network in recurring charges. The Commission has not made a finding that these costs are implicitly recovered in recurring charges.

SWBT testified that its cost studies supporting its recurring charges were based on least cost design and do not reflect the costs to condition existing loops.

In this proceeding the Commission's Staff advised against setting recovery of these costs in recurring charges because SWBT's network and the telecommunications environment are changing rapidly. Staff stated that setting recurring charges could be disadvantageous to CLECs. SWBT is

undertaking a major investment in its network called Project Pronto that over a short period of time will deploy technology that would eliminate the need for loop conditioning or qualification for most customers using SWBT's network. Thus, nonrecurring charges for loop conditioning will become more and more infrequent and therefore less burdensome to CLECs than longer term recovery in recurring charges.

Covad argued, in the alternative, that nonrecurring charges be substantially reduced. Covad and Staff both offered evidence to support reducing certain task times; to eliminate tasks and associated costs, such as charging CLECs for the potential restoral of bridged taps; and requiring SWBT to employ more efficient conditioning practices such as conditioning entire 25 or 50 pair loop binder groups, rather than conditioning only one loop at a time. Staff argued for limits on the number of loops to which conditioning charges would be applied and removing a joint and common cost allocation from nonrecurring charges.

SWBT's proposed charges are based on its own interviews with its employees to determine the amount of time required to complete the tasks necessary to disconnect interfering devices from its existing network.

Covad strenuously challenged the admission of SWBT's cost evidence based on the lack of a supervising witness to sponsor this information. The Commission rejected these arguments and accepted SWBT's evidence. The information presented by SWBT was developed based on SWBT's longstanding business practices and using business records and information on which it typically relies. The Commission has accepted this information in other proceedings.

Covad also requested sanctions against SWBT for what Covad believed were incomplete responses to its discovery requests. However, it does not appear that the lack of fully verified information is the result of intent on SWBT's part to deny discovery. SWBT was insistent that it produced all the information it had that was responsive to Covad's discovery requests. Covad did not establish that any evidence was intentionally withheld. The problem appears to lie with the manner in which the subject cost studies were developed and the work-in-process nature of SWBT's planning for network development. The Commission will direct SWBT to provide more current cost studies and other information. The Commission denies Covad's request for sanctions.

Covad also argued for a significant reduction in conditioning costs based on conditioning 25 or 50 pair loop binder groups rather than one loop at a time and spreading the cost over the binder group. Covad and Staff presented evidence on the efficiency of this practice and its benefits in maintaining the network. The problem with Covad's argument is that it is based on speculation about how many loops will be leased for xDSL services. Without some firm knowledge about how many loops will be leased, it is impossible to devise a nonrecurring per-loop charge that will fully compensate SWBT for the up-front costs it must incur to condition a loop for Covad's use. Covad could have, but did not, propose to pay for binder group conditioning with SWBT passing subsequent nonrecurring charges for conditioning that binder group back to Covad.

Staff is concerned that the imposition of significant up-front conditioning charges will discourage the entry of competition in the

provision of xDSL services and is concerned with the number of times such charges would apply. Staff proposed limiting the number of loops for which SWBT could charge nonrecurring conditioning costs to four loops out of 100. This proposal suffers the same infirmity as dividing conditioning charges by 50 or by 25: it results in a nonrecurring per loop charge that fails to fully compensate SWBT for the up-front costs it must incur to condition a loop for Covad's use.

The facilitation of service to a large number of customers is a worthy goal. SWBT is working toward this goal through Project Pronto.<sup>2</sup> This upgraded network will be available to Covad and other CLEC's on nondiscriminatory terms.

Covad and Staff offered reduced estimates of the time for certain tasks and resulting cost required to disconnect the interferors which reflect significant reductions to SWBT's estimates. This evidence was presented through the opinions of experts familiar with performing and supervising this work. Staff also recommended that the joint and common cost allocation factor should not be added to nonrecurring loop conditioning charges. Staff and Covad recommended the removal of SWBT's costs to restore bridged taps.

The Commission declines to make adjustments based on this record and will affirm and adopt for purposes of this interconnection agreement the nonrecurring charges it has previously approved. The Commission will

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<sup>2</sup> SWBT's Project Pronto is a network plan for deployment of additional fiber optic cables and next generation digital loop carrier (NGDLC) terminals, capable of providing xDSL-based services, in SWBT's loop network. These facilities will be first choice for xDSL.

order new cost studies to be performed by SWBT to document conditioning costs based upon verified data and facts and actual time and motion studies. The Commission will direct its Staff to participate in these cost studies. The Commission will direct that the cost studies be filed with the Commission within six months.

SWBT will also be directed to provide the Commission with confidential quarterly monitoring reports beginning July 1, 2000, showing the total number of loops requested for xDSL based services and the number of loops requested that required conditioning by binder group and by each affiliate or company requiring these loops or services.

The parties are directed to incorporate the conditioning prices adopted by the Commission in Sprint (Case No. TO-99-461, Arbitration Order, August 3, 1999).

### xDSL Loop Charges

This issue presents the appropriate recurring and nonrecurring charges for ISDN loops. SWBT and the Staff both recommended that the Commission adopt the rates approved in the AT&T arbitration (Case No. TO-97-40, et al., Final Arbitration Order July 31, 1999).

Covad asserted that SWBT's ISDN rates were too high, and urged the Commission to adopt a proxy based on rates for an affiliated company in another state. Covad asserted that certain pricing for electronics was too high and did not reflect current costs that had declined significantly in recent years.

SWBT conceded that the pricing data used in its study dated to 1996, that many inputs had changed, and that the pricing of electronics had

gone down. Nevertheless, SWBT asserted that it would be unfair to make changes to the cost study without reexamining all the inputs.

The Commission's Staff distinguished the ISDN loop rates used in other states. Specific adjustments to SWBT's costs were not offered by any party.

The Commission declines to make adjustments based on this record and will affirm and adopt the recurring and nonrecurring charges it has previously approved. The Commission will order new cost studies to be performed by SWBT to document these costs based upon verified data and facts and, in particular, updated electronics costs to reflect current technology and pricing. The Commission will direct its Staff to participate in these cost studies. The cost studies will be directed to be filed with the Commission within six months.

The parties are directed to incorporate the recurring and nonrecurring charges for ISDN loops adopted by the Commission in the AT&T arbitration (Case No. TO-97-40, et al., Final Arbitration Order July 31, 1999).

### Cross-Connect Rates

This issue presents the appropriate recurring and nonrecurring rates for nonshielded and shielded cross-connects. SWBT and Staff agreed that the appropriate recurring and nonrecurring charges for nonshielded cross-connects are those established in the AT&T arbitration (Case No. TO-97-40, et al., Final Arbitration Order July 31, 1999). SWBT and Staff agreed that the appropriate recurring and nonrecurring charges for

shielded cross-connects are those established in the Broadspan arbitration (Case No. TO-99-370, Final Arbitration Order June 15, 1999).

Covad asserted that it had not had an adequate opportunity to review SWBT's costing data. Covad suggested that the recurring charge was in the "ballpark" but offered an alternative for nonrecurring charges based on averaging a \$0.16 rate from California with a \$17.29 rate from Texas. SWBT distinguished the rates in California and Texas, noting that costing, component pricing and network design differs.

Covad has failed to support proposed pricing for shielded and nonshielded cross-connects based upon factors relevant to Missouri. The Commission declines to make adjustments based on this record and will affirm and adopt the recurring and nonrecurring charges it has previously approved.

The Commission will order new cost studies to be performed by SWBT to document these costs based upon verified data and facts. The Commission will direct its Staff to participate in these cost studies. The cost studies will be directed to be filed with the Commission within six months.

The parties are directed to incorporate the prices adopted by the Commission for recurring and nonrecurring charges for non-shielded cross-connects in the AT&T arbitration (Case No. TO-97-40, et al., Final Arbitration Order July 31, 1999), and recurring and nonrecurring charges for shielded cross-connects in the Broadspan arbitration (Case No. TO-99-370, Final Arbitration Order June 15, 1999).

## Technical Publications

The issue stated here was whether SWBT should have the ability to make unilateral substantive modifications to its technical publications. Covad argued that SWBT should not be able to make unilateral changes that would affect Covad's rights and obligations under its interconnection agreement. Based on Covad's testimony, it appears that Covad's concern arose out of circumstances in Texas and California where Covad believed that proposed technical publications would limit the technology Covad could offer or deploy.

SWBT asserted that it must have the capability to update its technical publications in order to keep them current with new technology and equipment used in its network and with national standards and applicable regulations. SWBT indicated that it was willing to subject any disagreements to a dispute resolution process, but that it could not subject its ability to make modifications to individual CLECs.

Staff proposed that SWBT be permitted to make changes to its technical publications without prior approval by companies with which it has interconnection agreements. Staff stated that those changes should not be allowed to change existing interconnection agreements without further negotiations or arbitration. The Commission accepts Staff's proposal.

## Conclusions of Law

The Missouri Public Service Commission has arrived at the following Conclusions of Law:

1. Section 252(b)(1) of the Telecommunications Act of 1934, as amended by the Telecommunications Act of 1996, provides that "during the period from the 135<sup>th</sup> to the 160<sup>th</sup> day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues."

2. Covad is a carrier for purposes of Section 252 of the Telecommunications Act of 1934 as amended by the Telecommunications Act of 1996.

3. SWBT is an incumbent local exchange carrier for purposes of Section 252 of the Telecommunications Act of 1934 as amended by the Telecommunications Act of 1996.

4. Covad's arbitration petition was timely filed, more than 134 and less than 161 days after Covad requested access to Unbundled Network Elements from SWBT on June 23, 1999.

5. Section 252(b)(4)(C) of the Telecommunications Act of 1934 as amended by the Telecommunications Act of 1996 provides that:

[t]he State Commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) upon the parties to the agreement and shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.

SWBT received Covad's request on June 23, 1999, and therefore the Commission must act to resolve this arbitration no later than March 23, 2000.

6. Section 252(c) of the Telecommunications Act of 1934 as amended by the Telecommunications Act of 1996 provides that "[I]n resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission shall - . . .

(2) establish any rates for interconnection services, or network elements according to subsection (d). . . ."

7. Section 252(d) of the Telecommunications Act of 1934 as amended by the Telecommunications Act of 1996 provides that:

Determinations by a State Commission of the just and reasonable rate for . . . network elements for purposes of subsection (c)(3) of such section -

(A) shall be -

(i) based on the cost (determined without reference to a rate-of-return or other rate based proceeding) of providing the . . . network element . . . , and

(ii) nondiscriminatory, and

(B) may include a reasonable profit.

8. Section 252(e)(4) of the Telecommunications Act of 1934 as amended by the Telecommunications Act of 1996 provides that when an agreement adopted by arbitration is submitted to the Commission for approval, that the agreement will be deemed approved if the Commission does not act to approve or reject the agreement within 30 days.

**IT IS THEREFORE ORDERED:**

1. That Southwestern Bell Telephone Company shall charge DIECA Communications Inc., d/b/a Covad Communications Company, a nonrecurring charge of \$15.00 per loop for loop qualification services until August 1, 2000. After August 1, 2000, this charge shall not apply.

2. That on and after August 1, 2000, Southwestern Bell Telephone Company shall provide DIECA Communications Inc., d/b/a Covad Communications

Company, with electronic access to only the relevant loop qualification data that exists in Southwestern Bell Telephone Company's mechanized databases. Covad shall have electronic access to this data through Southwestern Bell Telephone Company's Operational Support System at no additional charge.

3. That Southwestern Bell Telephone Company and DIECA Communications Inc., d/b/a Covad Communications Company, shall incorporate the conditioning prices adopted by the Commission in Sprint (Case No. TO-99-461, Arbitration Order, August 3, 1999).

4. That Southwestern Bell Telephone Company shall perform new cost studies to document conditioning costs based upon verified data and facts and actual time and motion studies. The Commission's Staff shall participate in these cost studies. The cost studies shall be filed with the Commission within six months.

5. That Southwestern Bell Telephone Company shall provide the Commission with confidential quarterly monitoring reports beginning July 1, 2000, showing the total number of loops requested for xDSL based services and the number of loops requested that required conditioning by binder group and by each affiliate or company requiring these loops or services.

6. That Southwestern Bell Telephone Company and DIECA Communications Inc., d/b/a Covad Communications Company, shall incorporate the recurring and nonrecurring charges for ISDN loops adopted by the Commission in the AT&T arbitration (Case No. TO-97-40, et al., Final Arbitration Order July 31, 1999).

7. That Southwestern Bell Telephone Company shall perform new cost studies to document ISDN loop costs based upon verified data and facts, and, in particular updated electronics costs to reflect current technology and pricing. The Commission's Staff shall participate in these cost studies. The cost studies shall be filed with the Commission within six months.

8. That Southwestern Bell Telephone Company and DIECA Communications Inc., d/b/a Covad Communications Company, shall incorporate the prices adopted by the Commission for recurring and nonrecurring charges for nonshielded cross-connects in the AT&T arbitration (Case No. TO-97-40, et al., Final Arbitration Order July 31, 1999), and, recurring and nonrecurring charges for shielded cross-connects in the Broadspan arbitration (Case No. TO-99-370, Final Arbitration Order June 15, 1999).

9. That Southwestern Bell Telephone Company shall perform new cost studies to document prices for recurring and nonrecurring charges for nonshielded cross-connects, and recurring and nonrecurring charges for shielded cross-connects. The Commission's Staff shall participate in these cost studies. The cost studies shall be filed with the Commission within six months.

10. That Southwestern Bell Telephone Company may amend its technical publications and apply those amendments to DIECA Communications Inc., d/b/a Covad Communications Company, without obtaining prior approval.

Amendments to technical publications for reasons other than actions of Missouri or federal legislative bodies, courts or regulatory agencies shall

not be allowed to change any existing interconnection agreement between the parties without further negotiation or arbitration.

11. That Southwestern Bell Telephone Company and DIECA Communications Inc., d/b/a Covad Communications Company, shall submit their executed interconnection agreement to the Commission's Staff 15 days prior to filing it for the Commission's final review and approval.

12. That the Staff of the Missouri Public Service Commission shall submit its recommendations to the Commission concerning approval or rejection of the arbitrated interconnection agreement 15 days after the agreement is filed for the Commission's final review and approval.

13. That the request for sanctions by DIECA Communications Inc., d/b/a Covad Communications Company is denied.

14. That this order shall become effective on March 23, 2000.

BY THE COMMISSION



Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge

( S E A L )

Lumpe, Ch., concurs, with separate concurring opinion attached;  
Crumpton, Drainer, and Murray, CC., concur;  
Schemenauer, C., dissents.

Dated at Jefferson City, Missouri,  
on this 23rd day of March, 2000.

**BEFORE THE PUBLIC SERVICE COMMISSION**  
**OF THE STATE OF MISSOURI**

In the Matter of the Petition of DIECA Communi- )  
cations, Inc., d/b/a Covad Communications )  
Company, for Arbitration of Interconnection ) Case No. TO-2000-322  
Rates, Terms, Conditions and Related Arrange- )  
ments With Southwestern Bell Telephone Company. )

**CONCURRING OPINION OF CHAIR SHEILA LUMPE**

I am able to concur in this Arbitration Order because the underlying agreement is for a limited term of one year and because the Commission has directed the production of new cost studies. However, I do support Staff's position that costs for restoration of bridged taps should have been removed from conditioning costs.

The use of bridged tap is at the sole discretion of Southwestern Bell Telephone Company and is a means that it uses to service its new customers while avoiding investment it should be making in its own network. Southwestern Bell Telephone Company's assertion that Covad Communications Company is responsible for this cost has no merit. The use of bridged taps provide no benefit to Covad Communications Company and hinders high-speed data access that both incumbent and competitive local exchange companies desire to provide to meet growing consumer demand for these services.

I can find no justification for including restoration of bridged taps as a cost of providing an xDSL-capable loop.

RESPECTFULLY SUBMITTED,

A handwritten signature in cursive script that reads "Sheila Lumpe".

Sheila Lumpe  
Chair

Dated at Jefferson City, Missouri,  
on this 23rd day of March, 2000.